

PLANNING COMMISSION MINUTES

June 1, 2000

CALL TO ORDER:

Chairman Dan Maks called the meeting to order at 7:05 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

ROLL CALL:

Present were Chairman Dan Maks, Planning Commissioners Betty Bode, Chuck Heckman, Eric Johansen and Vlad Voytilla. Commissioners Bob Barnard and Sharon Dunham were excused.

Development Services Manager Irish Bunnell, Senior Planner John Osterberg, John Spencer, Assistant City Attorney Bill Scheiderich, Transportation Planner Sean Morrison and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Maks, who presented the format for the meeting.

VISITORS:

Chairman Maks asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

OLD BUSINESS:

PUBLIC HEARING:

Chairman Maks opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response

CONTINUANCES:

A. BEARD COURT

The following land use applications have been submitted for a 60-unit single family detached, Planned Unit Development, proposed to be located east of SW 155th Avenue and north of SW Beard Road. The zone change and development proposal is located on property identified by the Washington County Assessor's Map 1S1-29DB, on Tax Lot's 101, 300, 400, and 500, and is zoned Neighborhood Service Center (NS).

1. **RZ 2000-0001: BEARD COURT REZONE:**

The applicant requests approval of a Rezone (RZ) to change the City's zoning designation from Neighborhood Service Center (NS) to Urban Standard Density Residential (R-5). This rezone is proposed with the condition that if the Conditional Use Permit (PUD) is denied, the denial will prevent the final approval of the Rezone. This rezone is also proposed with the condition that if the two Sexton Mountain Rezones (RZ2000-0002, RZ2000-0003) are denied, the denial will prevent the final approval of the Beard Court Rezone. The Planning Commission will review the rezone request through the RZ2000-0001 application.

2. **CUP 2000-0001: BEARD COURT CONDITIONAL USE PERMIT (PUD):**

Request for a Conditional Use Permit approval for a 60-unit Planned Unit Development (PUD) on 10.33 acres of land. The PUD request includes proposed single family homes, sidewalks, streets, open space tracts, and associated landscaping. Proposed access points include two locations on SW 155th Avenue, and two locations on SW Beard Road. The Planning Commission will review the preliminary development plan through the CUP2000-0001 application.

3. **TPP 2000-0001: BEARD COURT TREE PRESERVATION PLAN:**

The applicant requests Tree Preservation Plan approval to remove trees within an area identified as a "significant grove" on Beaverton's Inventory of Significant Trees. The Tree Preservation Plan is proposed with this project to evaluate removal and impact to existing trees as a result of the residential development. The Planning Commission will review the proposal through the TPP2000-0001 application.

C. **THE SEXTON MOUNTAIN VILLAGE PROJECT:**

The following land use applications have been submitted for the development of a grocery store approximately 61,000 square feet in size and approximately 94 townhomes at the northwest corner of SW Murray Boulevard and SW Beard Road. The zone change and development proposal is located on property identified by Washington County Assessor's Map 1S1-29DD on Tax Lots 100 and 200, and is currently zoned Urban Standard Residential (R-5).

1 1. **RZ 2000-0002: THE SEXTON MOUNTAIN VILLAGE PROJECT/**
2 **HAGGEN STORE ZONE CHANGE:**

3 Request for Zone Change approval from R-5 to Community Service (CS) on
4 the northern portion of the Sexton Mountain Village parcels. On this portion
5 of the site, the applicant is proposing the development of a grocery store
6 approximately 61,000 square feet in size, which would be a permitted use
7 within the CS zone. The Planning Commission will review this Zone Change
8 through the RZ2000-0002 application during a public hearing. This Zone
9 Change application will be reviewed in conjunction with RZ2000-0001 Beard
10 Court Rezone, RZ2000-0003 Sexton Village Zone Change, and CUP2000-
11 0003 Sexton Mountain Village CUP (PUD). A condition to the approval of
12 all three Zone Changes and the CUP would be if one application were to be
13 denied, then the denial of that application would prevent the approval of the
14 other applications.

15
16 2. **RZ 2000-0003: THE SEXTON MOUNTAIN VILLAGE PROJECT/**
17 **SEXTON PLACE TOWNHOMES ZONE CHANGE:**

18 Request for Zone Change approval from R-5 to Urban Medium Density (R-
19 2) on the southern portion of the Sexton Mountain Village parcels. On this
20 portion of the parcels, the applicant is proposing the development of
21 approximately 94 residential units, which would be a permitted use within
22 the R-2 zone. The Planning Commission will review this Zone Change
23 though the RZ2000-0003 application during a public hearing. This Zone
24 Change application will be reviewed in conjunction with RZ2000-0001
25 Beard Court Rezone, RZ2000-0002 Haggen Store Zone Change, and
26 CUP2000-0003 Sexton Mountain Village CUP (PUD). A condition to the
27 approval of all three Zone Changes and the CUP would be if one application
28 were to be denied, then the denial of that application would prevent the
29 approval of the other applications.

30
31 3. **CUP 2000-0003: THE SEXTON MOUNTAIN VILLAGE PROJECT/**
32 **SEXTON MOUNTAIN VILLAGE CONDITIONAL USE PERMIT**
33 **(PUD):**

34 Request for Conditional Use Permit (CUP) approval for the Sexton Mountain
35 Village Planned Unit Development (PUD). The CUP will review the
36 development of the grocery store and townhomes as one planned
37 development. Additionally, the applicant is requesting the height of a portion
38 of the grocery store to approximately 43 feet, exceeding the 35-feet allowed in
39 the CS zone. The Planning Commission will review this PUD though the
40 CUP2000-0003 application during a public hearing. This CUP application
41 will be reviewed in conjunction with RZ2000-0001 Beard Court Rezone,
42 RZ2000-0002 Haggen Store Zone Change, and RZ2000-0003 Sexton Place
43 Townhomes Zone Change. A condition to the approval of all three Zone
44 Changes and the CUP would be if one application were to be denied, then the
45 denial of that application would prevent the approval of the other applications.

1 4. **CUP 2000-0002: THE SEXTON MOUNTAIN VILLAGE PROJECT/**
2 **HAGGEN STORE 24-HOUR OPERATION CONDITIONAL USE**
3 **PERMIT:**

4 Request for Conditional Use Permit (CUP) approval to operate the proposed
5 grocery store 24 hours a day. Uses that operate in the CS zone between 10:00
6 p.m. and 7:00 a.m. require a CUP. The Planning Commission, during a public
7 hearing, will review the hours of operation through the CUP2000-0002
8 application.

9
10 Chairman Maks welcomed Commissioner Heckman back, noting that
11 following his departure the previous meeting, they had continued with staff
12 questions but because they had wanted his input, they had not continued the
13 discussion.

14
15 Expressing his appreciation for the tape of the remainder of last night's Public
16 Hearing, Commissioner Heckman observed that he had listened to the tape
17 twice, felt he had not missed a lot and is ready to proceed.

18
19 Chairman Maks observed that his procedure would be to randomly poll on
20 opinion of all Commissioners for multiple applications, requesting that they
21 specify any conditions or concerns.

22
23 Commissioner Johansen requested clarification of whether Commissioners
24 should raise all concerns and return to discuss them all later, or discuss each
25 issue as it is raised.

26
27 Chairman Maks indicated that he prefers that all concerns be raised, prior to a
28 consensus motion.

29
30 Chairman Maks addressed RZ 2000-0001 -- Beard Court Rezone, noting that
31 he agrees with much of Mr. Rapp's testimony and during the Comprehensive
32 Plan Amendment he had leaned towards higher density designation for that
33 area. He pointed out that because the City Council had adopted the
34 Comprehensive Plan Amendment for Urban Standard, and to accomplish this
35 goal and obtain the highest density indicates the necessity of the R-5 zone. He
36 expressed his support of RZ 2000-0001 -- Beard Court Rezone.

37
38 Chairman Maks referred to RZ 2000-0002 -- Haggen Store Zone Change,
39 noting that he does agree somewhat with Mr. Holady that NS does in some
40 ways fit the objectives closer. Referring to how the CS zone works, he noted
41 that the Comprehensive Plan does not necessarily always walk hand in hand
42 with the Development Code. He expressed his opinion that a variance could
43 not be achieved for the NS zone, adding that many of these variance
44 requirements are dictated by State law. He expressed his support of RZ 2000-
45 0002 -- Haggen Store Zone Change.

46

1 Chairman Maks addressed RZ 2000-0003 – Sexton Place Townhome Zone
2 Change, expressed his support of this zone change, which he feels is
3 appropriate along both an arterial and along a transit corridor.
4

5 Chairman Maks expressed his appreciation to all of the participation and
6 involvement in these seven applications, including the applicants and
7 opponents, adding that when he witnesses this type of involvement in the
8 processes, he is proud to be a Planning Commissioner. Describing himself as
9 basically “Joe 6-Pack”, he emphasized that he is a firm believer in the process.
10

11 Chairman Maks referred to CUP 2000-0001 – Beard Court Conditional Use
12 Permit/Planned Unit Development, noting that this is the first application of
13 Polygon NW that he has reviewed and that he considers this application a
14 class act. He complimented Mr. Gast’s presentation, adding that it is obvious
15 that he enjoys and takes pride in his work. He described this as a quality
16 project, adding that he supports this project wholeheartedly. He expressed
17 concern with conditions with regard to road maintenance and appropriate
18 signage with regard to fire. Although it is not actually a part of this particular
19 land use action, he expressed appreciation of the applicant’s work with the
20 neighbors, emphasizing that the City of Beaverton has no responsibility to
21 monitor that relationship.
22

23 Chairman Maks addressed TPP 2000-0001 – Beard Court Tree Preservation
24 Plan, noting that the issue regarding the elm in right of way has been
25 identified and addressed. Expressing his support of this plan, he noted that he
26 would like one thing added, stipulating that “the tree group will be protected
27 by fencing and the ground contained within left undisturbed.” He pointed out
28 that he has seen tree preservation plans in which trees were fenced and the
29 fence had been opened up for the purpose of storing their pipe, brick or
30 mortar, which should not be done within the root areas.
31

32 Chairman Maks discussed CUP 2000-0003 – The Sexton Mountain Village
33 Project Conditional Use Permit/Planned Unit Development, emphasizing that
34 during the past and present process, both opponents and proponents of this
35 issue have addressed the key issues of this application
36

37 Commissioner Maks referred to CUP 2000-0002 – Hagen Store 24-Hour
38 Operation, emphasizing that he is not a 24-hour kind of guy and does not
39 support this application, adding that he would support expanded hours, but not
40 24-hours. He referred to the applicant’s statement that they intend to serve the
41 Sexton Mountain and South Beaverton areas, noting that he has lived in the
42 South Beaverton area for 23 years and does not know anyone who shops at
43 2:00 a.m. or 3:00 a.m., although he is aware of people who shop between the
44 hours of 10:00 p.m. and Midnight. Referring to 3.5.7.3 – Commercial
45 activities should be directed into areas where it can develop harmoniously
46 with the rest of the community; and 3.4.2.11 – Various residential uses should

1 be protected from the intrusion of incompatible uses in order to preserve and
2 stabilize values and the character of the area. He expressed his opinion that
3 this application fails to meet those criteria. Expressing his appreciation of the
4 further noise study, he expressed his disagreement with the rationalization that
5 one more peak noise won't make any difference. He noted that the
6 neighborhood is quieter at 1:00 a.m. and 2:00 a.m., making those peaks that
7 much more noticeable.
8

9 Chairman Maks referred to 3.5.8.F – Care should be taken to control the size,
10 location and scale of new commercial development so that they do not
11 generate traffic from outside the intended service area. He expressed his
12 opinion that a 24-hour operation would draw customers from outside the
13 intended service area. He observed that the covered enclosure is not as big of
14 an issue, taking into consideration the noise produced with berming and the
15 design of the store in comparison to the decibel levels of a neighbor's air
16 conditioner. Referring to a comment that the applicant could return seeking a
17 24-hour operation conditional use permit, he expressed his opinion that this
18 would not be granted without a covered enclosure.
19

20 Chairman Maks again referred to CUP 2000-0003 – Sexton Mountain Village
21 Conditional Use Permit/Planned Unit Development, noting that he is
22 concerned with 3.5.4 – the purpose statement, regarding impairment of the
23 overall efficiency of roadways; 3.5.8.3.B -- special regulations for limiting
24 access should be developed; and 6.2.1.A. – maintain livability through proper
25 location and design of transportation facilities. He expressed appreciation to
26 the applicant for further study with regard to the Murray Boulevard right turn
27 lane and the Beard Road turn lanes. He emphasized that the Planning
28 Commission is being 0.5 seconded and 0.7 seconded to death, adding that half
29 the town is being speed bumped because the collector streets don't work and
30 the arterial streets don't work because of additional traffic, additional people
31 and lack of foresight, even by himself. Emphasizing that the intent is to plan
32 for the future, he stated that he would accept improvements of the traffic
33 signal on Murray Boulevard, and an addition of a right hand turn lane, when
34 necessary. He referred to the 0.7 on Beard Road, stating that he is unable to
35 agree with this with regard to approving this application. Noting that a lot of
36 area remains to be developed off of 155th Avenue, he expressed his concern
37 with queuing the traffic analysis. Without a left hand turn lane, there will be a
38 deteriorating effect on that arterial. He mentioned that he had intended to seek
39 a condition for a left-hand turn lane off of Beard Road into the site, noting that
40 he has now determined that the right-of-way is not adequate. Because one
41 portion of the road is narrower, it can not just be striped. He stated that he is
42 not in support of CUP 2000-0003 – Sexton Mountain Village Conditional Use
43 Permit/Planned Unit Development, due to the lack of the left hand turn lane,
44 adding that he is willing to listen to what his fellow Commissioners have to
45 say.
46

1 Commissioner Heckman informed Chairman Maks that he has covered a great
2 deal of his concerns.

3
4 Chairman Maks apologized for interrupting Commissioner Heckman, stating
5 that should the application move forward, he wants to make certain that CUP
6 2000-0003 – Sexton Mountain Village Conditional Use Permit/Planned Unit
7 Development reflects the same conditions with the CC&R with the private
8 streets, signage for fires, and the conditions regarding blowers be inserted, as
9 well as the turn signal on Murray Boulevard and Maverick Terrace.

10
11 Commissioner Heckman agreed that the Comprehensive Plan Amendment
12 does not leave much choice in this situation, adding that this plan also
13 provides direction.

14
15 Chairman Maks requested that Commissioner Heckman make a reference
16 regarding which application he is addressing.

17
18 Commissioner Heckman referred to RZ 2000-0002 – Haggen Store Zone
19 Change, and referred to the constraints of the Development Code. He
20 emphasized that the CS zone is likely the only zone that fits the appropriate
21 conditions, adding that this has been upheld in Salem, as well.

22
23 Commissioner Heckman expressed his support of RZ 2000-0001 – Beard
24 Court Rezone.

25
26 Commissioner Heckman expressed his support of RZ 2000-0002 – Haggen
27 Store Zone Change.

28
29 Commissioner Heckman expressed his support CUP 2000-0001 – Beard Court
30 Conditional Use Permit, adding that his concerns with one specific tree had
31 been addressed and that another condition should be added to this land use
32 permit.

33
34 Commissioner Heckman referred to TPP 2000-0001 – Beard Court Tree
35 Preservation Plan, observing that both staff and the arborist had done a good
36 job. He suggested a condition that the ground inside of the fenced areas not
37 be disturbed, compacted or used for any storage or any other purposes. He
38 expressed his opinion that this plan had been well thought out, and that the
39 developer should ensure this at least until the project is completed.

40
41 Commissioner Heckman referred to RZ 2000-0003 – Sexton Place
42 Townhomes Zone Change, noting that this application meets all criteria,
43 appears to be well-designed, all conditions on the Staff Report appear to be in
44 order, and noted that he has no objection as long as all grading, street
45 improvements and landscaping is installed as presented, under the following

1 condition: "or as modified by the Board of Design Review, maintaining
2 consistency with the presented plan."
3

4 Commissioner Heckman addressed CUP 2000-0003 – Sexton Mountain
5 Village Conditional Use Permit/Planned Unit Development, observing that he
6 had experienced difficulties with this application. Observing that the
7 application sounds good and the townhomes are well designed, he referred to
8 the Metro goal to reduce parking. He pointed out that this application requests
9 increased parking, greater than those in recently-adopted standards,
10 questioning whether it had been premature these standards and grant an
11 increase within such a short period of time. He referred to other grocery
12 operations in this trade area, noting that after 5:00 p.m. on Saturday and
13 Sunday, these stores do not seem to be crowded. He observed that one store's
14 parking lot was 90% full, but had adequate on-site overflow parking available.
15

16 Commissioner Heckman expressed concern with whether the developer will
17 absorb the entire cost of the signalization at Murray Boulevard and Maverick
18 Terrace.
19

20 Commissioner Heckman questioned whether Tri-Met has committed to
21 increasing the operation of the 62 Bus Route, serving Murray Boulevard,
22 adding that the 92-X will serve the residents of the townhomes quite
23 adequately. Without improvements, the 62 will not serve much purpose,
24 although with improvements, it is capable of benefitting those working in
25 Beaverton and Hillsboro and the rest of Washington County.
26

27 Commissioner Heckman referred to 40.05.15.3.C.2, regarding compatibility,
28 noting that the housing segment of these applications appears to satisfy the
29 applicable criteria, although he is yet to be completely convinced that the
30 grocery store will be compatible with the residential siting. He noted that the
31 City Attorney recently identified compatibility as compatible with and for all
32 residents of the City of Beaverton. Referring to 40.05.15.3.C.1, regarding
33 design features, he emphasized that he fails to be impressed by a canopy ridge
34 height at 42 feet 6 inches. In his opinion, this is an attempt to detract from the
35 horizontal features of the structure and the incompatibility with remainder of
36 the residential development would also detract from the appearance of the
37 remainder of the 17-acre development. He referred to Ordinance 4032,
38 Section 3.A. – the design features minimum visual impact, noting that this
39 ordinance is very specific regarding design features and that the City Council
40 had included special wording to make certain that this ordinance would not be
41 construed as *carte blanche*. The Planning Commission and/or the Board of
42 Design Review is to approach this action as any other with no special
43 preference.
44

45 Commissioner Heckman referred to the tape that had been provided to him
46 this morning that included last night's meeting following his departure, noting

1 that this had opened one avenue of concern to him – the pedestrian connection
2 from the parking lot to Murray Boulevard. Noting that the applicant has
3 agreed to relocate the sidewalk adjacent to the connection point, he pointed
4 out that this relocation would involve moving the sidewalk from curb tight
5 and creating a planting strip in the area. The applicant had indicated a strip
6 three to five feet wide, and he suggested a condition of approval providing for
7 a five-foot wide planting strip, observing that staff has indicated that the
8 proper wording has already been prepared.

9
10 Commissioner Heckman referred to CUP 2000-0002 – Haggen Store 24-Hour
11 Operation Conditional Use Permit, noting that he has served on the Planning
12 Commission for 126 months and that the Commission has been very tight on
13 granting any 24-hour operations. He mentioned that recently a 24-hour
14 operation had been granted with a conditional use permit, although there had
15 been pretty severe restrictions, including no deliveries between 10 p.m. and 7
16 a.m. He observed he does not feel that a 24-hour operation is necessary,
17 adding that many of the stores who were granted 24-hour operation have tried
18 them and because the market is not there, stopped. He emphasized that the
19 any urgent need for a prescription in the middle of the night would probably
20 indicate the necessity of visiting the nearest Emergency Room. He pointed
21 out that conditional use permit delivery hours could be conditioned by the
22 Planning Commission, noting that he does not support the proposed 24-hour
23 operation.

24
25 On question, Commissioner Heckman informed Chairman Maks that he had
26 addressed CUP 2000-0001 – Beard Court Conditional Use Permit/Planned
27 Unit Development.

28
29 Commissioner Voytilla referred to RZ 2000-0001-- Beard Court Rezone,
30 noting that he concurs with his fellow Commissioners, feels this zoning is
31 appropriate for the site, complies with the direction of the City Council, and
32 that he supports this rezone.

33
34 Commissioner Voytilla mentioned that he is very pleased with CUP 2000-
35 0001 – Beard Court Conditional Use Permit/Planned Unit Development,
36 adding that he concurs with Chairman Maks' comments to Polygon NW. He
37 stated that he is very impressed with Mr. Gast's efforts, adding that it is
38 obvious that he has a great passion for his work. He expressed his opinion
39 that this development will be a good addition to the area, adding that he can
40 easily visualize what they are attempting to accomplish. He expressed
41 concern with making certain that road maintenance issues and CC&R's are
42 adequately addressed, and expressed his approval of CUP 2000-0001.

43
44 Commissioner Voytilla referred to TPP 2000-0001 -- Beard Court Tree
45 Preservation Plan, expressing his opinion that this tree preservation plan is
46 very well done. Noting that he had been concerned with the fate of the

1 American Elm Tree, he observed that because this tree is located within the
2 street right-of-way, this issue has been adequately addressed. He mentioned
3 that he had also considered the impacts of surrounding trees, pointing out that
4 there is very little chance that this particular tree could be adequately
5 preserved. He expressed concern with individuals disrespecting the fences
6 located for the protection of significant trees, noting that he would like to
7 include appropriate signage, adding that a big red sign may even serve to
8 prevent children from entering that area.

9
10 Commissioner Voytilla addressed RZ 2000-0002 – Haggen Store Zone
11 Change, expressing his opinion that it would be difficult to justify an NS
12 zoning variance and that the CS zoning is appropriate. He noted that
13 testimony had indicated many issues questioning the suitability, the
14 buildability and the geo-technical aspects of the site, pointing out that these
15 are not the focuses of the criteria. He mentioned that the applicant is totally
16 aware of these conditions, adding that there is a long history and that their
17 expert consultants are very capable of making the appropriate
18 recommendations. He referred to their statements that many of the issues can
19 be addressed within standard construction methodology, creating no impact to
20 other neighbors in area, adding that certain activities will occur only during
21 certain hours within certain noise levels. He discussed his concern with
22 pedestrian access, observing that he would like to review the language that
23 staff has prepared relative to making sidewalks that are not the curb-type,
24 making pedestrian use a little more friendly.

25
26 Commissioner Voytilla referred to RZ 2000-0003 – Sexton Place Townhomes
27 Zone Change, noting that he will address the related conditional use permit
28 first.

29
30 Commissioner Voytilla discussed CUP 2000-0003 – Sexton Mountain Village
31 Conditional Use Permit/Planned Unit Development, expressing his concern
32 with traffic and access. He noted that he is particularly concerned with how
33 people traveling on Beard Road will even be aware of the Haggen Store,
34 which is situated at the end of a narrow driveway in between several multi-
35 family developments. He questioned whether this indicates the necessity for
36 more signage in the future, which is out of character with the remainder of the
37 neighborhood. He referred to the high Haggen Store structure, noting that it
38 includes signage. He mentioned that he would like to further explore the issue
39 of the left-hand turn lane, specifically whether the improvement is to narrow
40 or the right-of-way is too narrow. He noted that he approves of the concept of
41 this application, expressing his opinion that some conditioning could address
42 any issues of concern.

43
44 Commissioner Voytilla referred to RZ 2000-0003 – Sexton Place Townhomes
45 Zone Change, expressing concern with traffic and funding for maintenance,
46 noting that if these issues are addressed, he supports the application.

1 Commissioner Voytilla referred to CUP 2000-0002 – Haggen Store 24-Hour
2 Operation Conditional Use Permit, noting that he has been impressed with the
3 applicants relative to their diligence with putting together information relative
4 to noise, particularly their foresight in obtaining the late night background
5 noise analysis. He mentioned that he is also impressed with the applicant's
6 desire to enclose the loading dock, adding that this is a fairly significant
7 method of mitigating any potential problems with traffic. He emphasized that
8 he is not very concerned with the 24-hour operation versus the restricted
9 hours, expressing his opinion that it will not make that great of a difference.
10 He pointed out that the lights will still be on, employees will be stocking
11 shelves and deliveries will be restricted. He noted that the real issue is
12 whether the market will support a 24-hour operation, adding that it's their
13 nickel to determine whether it is feasible. He mentioned that he does know
14 people who shop at odd hours, has shopped at odd times himself, prefers to do
15 this in his own area, and can see a potential need. He mentioned that
16 conditioning should include a restriction on the use of the parking lot for
17 maintenance after hours and tree buffering that has been proposed by the
18 applicant, adding that a maintenance agreement should provide for the
19 maintenance and replacement of these trees over time.
20

21 Commissioner Voytilla expressed he approval of what he considers a great
22 presentation, adding that he concurs with the staff and that while public
23 support is strong, this is not a popularity contest. He emphasized the necessity
24 of considering all seven applications relative to applicable criteria, and
25 pointed out that the public had been instrumental in making this difficult task
26 easier to deal with and much more enjoyable.
27

28 Commissioner Bode referred to RZ 2000-0001 – Beard Court Rezone, noting
29 that in her opinion, this meets the metro density requirements, provides a good
30 use of the land and a good exchange. Observing that she will not repeat what
31 has already been stated by her fellow Commissioners, she noted that she
32 concurs and approves of RZ 2000-0001.
33

34 Commissioner Bode addressed CUP 2000-0001 – Beard Court Conditional
35 Use Permit (Planned Unit Development), noting that one of the positive
36 aspects of being a Planning Commissioner is the in-depth view of efforts a
37 developer invests in a proposal. She emphasized that she was impressed with
38 the efforts of Polygon NW, particularly the pricing of the units, which she
39 considers appropriate for this area. She mentioned the key effort of Polygon
40 NW for citizen involvement. She mentioned that a recurrent theme seems to
41 be that by giving approval, it is still necessary to review clarification
42 regarding road maintenance and appropriate fire safety signage. She pointed
43 out that these issues appear to be minor in terms of cost but major in terms of
44 citizen-friendly activity.
45

1 Commissioner Bode addressed TPP 2000-0001 – Beard Court Tree
2 Preservation Plan, expressing her opinion that the applicant's efforts to
3 preserve trees are limited to areas on which they could not build anyway,
4 although she is glad it is being preserved for trees. She noted that she is very
5 impressed with the efforts of the arborist to number and identify trees, and
6 expressed her support of TPP 2000-0001.

7
8 Commissioner Bode referred to RZ 2000-0003 – Sexton Place Townhomes
9 Zone Change, observing that she could be supportive of this application on the
10 condition that this little traffic pattern can be cleaned up. She referred to
11 signage, requesting that a simple and safe traffic pattern be created now, rather
12 than later, at a greater cost, adding that she supports RZ 2000-0003.

13
14 Commissioner Bode discussed RZ 2000-0002 – Haggen Store 24-Hour
15 Operation Conditional Use Permit, expressing her opinion that the request
16 meets the applicable criteria and that the fact finding presented by staff
17 seemed reasonable. She observed that this constitutes the third piece in a
18 puzzle, providing for a new area of livability and service to the citizens of
19 South Beaverton. She expressed her approval of RZ 2000-0002.

20
21 Commissioner Bode referred to CUP 2000-0003 – Sexton Mountain Village
22 Conditional Use Permit/Planned Unit Development, observing that the layout
23 of the townhouses offers another style of living from single story to
24 townhouses, although she is not certain that she agrees that this targets the
25 first time buyer. She expressed her opinion that the traffic pattern on the
26 townhouse development sends the cars directly in front of the Haggen Store if
27 they choose to go out to the Maverick Terrace light, adding that another exit
28 would allow them to exit through the back side of the parking lot. This would
29 eliminate putting the trucks and townhouse residents in front of the Haggen
30 Store front door, along with the pedestrians and bicycle traffic.

31
32 Commissioner Bode addressed CUP 2000-0002 – Haggen Store 24-Hour
33 Operation/Conditional Use Permit, emphasizing because she is not in the
34 position to limit the freedom of any individual to shop at any time they
35 choose, she is in total support of the entire application. She pointed out that if
36 no one chooses to shop those hours throughout the night, it obviously didn't
37 work. She pointed out that the 24-hour operation would mean an increase of
38 one employee, noting that the impact of one employee would be very slight.
39 She expressed her opinion that it is not up to the Planning Commission to
40 prevent someone who has a need from making their own choice, adding that
41 people should have the freedom to determine where and how they spend their
42 money. She urged the other Commissioners to reconsider their position on
43 this issue, adding that if the 24-hour operation does not fulfill a need, Haggen
44 Stores will be the first to know, and if it does fulfill a need, the citizens will be
45 the first to know.

1 Commissioner Bode expressed appreciation to the applicant and experts who
2 testified, as well as the citizens who spoke, particularly those who are unused
3 to speaking in public. She thanked the gentleman who provided the
4 information regarding the accessibility of Haggen Store for wheelchairs,
5 emphasizing that the goal is to serve all citizens in the Beaverton area. She
6 concurred with Commissioner Voytilla's comments, emphasizing that
7 individuals have the right to make their own choices. She observed that she
8 had understood the applicant to say that a 24-hour pharmacy is not a part of
9 the plan at this time. She stated that she understands that they intend to
10 perform some type of market or research plan to determine whether there is a
11 need for a 24-hour pharmacy in this area. She expressed her disagreement
12 with Commissioner Heckman, emphasizing that individuals must have the
13 option of where they purchase their prescription drugs, adding that their
14 insurance company has some control over this issue. Observing that she has
15 some expertise in this issue, she pointed out that while they would cover a
16 prescription from Safeway, an insurance company is unlikely to pay for a
17 prescription from St. Vincent's. She urged her fellow Commissioners to
18 reconsider approval of this application.

19
20 Noting that she is an R.N. with a PhD., Commissioner Heckman expressed his
21 recognition of Commissioner Bode's expertise in this matter.

22
23 Observing that she has a background in the area of human rights and served
24 on the Human Rights Commission for six years, Commissioner Bode
25 emphasized that freedom and choices are part of her area of expertise. She
26 mentioned that she has no real expertise in traffic, although she does not like
27 stacking. She noted that while others want to discuss traffic, she wants to
28 discuss about insuring some rights and some choices that we all make,
29 emphasizing that we are all guaranteed some freedom in this process.

30
31 Commissioner Johansen referred to RZ 2000-0001 – Beard Court Rezone,
32 expressing his opinion that this application is in compliance with applicable
33 statutory and regulatory requirements. Noting that this is an easy decision and
34 that the application implements the intent of the City Council, he expressed
35 his approval of RZ 2000-0001.

36
37 Commissioner Johansen addressed CUP 2000-0001 – Beard Court –
38 Conditional Use Permit/Planned Unit Development, expressing his opinion
39 that this is a quality development and fulfills a need within the community.
40 He expressed concern with the number of accesses onto an arterial, adding
41 that he feels the Planning Commission may later regret this lack of foresight.
42 He agreed that the issues of road maintenance and signage need to be
43 addressed. Noting that the application complies with applicable criteria, he
44 expressed his support of CUP 2000-0001.

45

1 Commissioner Johansen expressed his approval of TPP 2000-0001 – Beard
2 Court Tree Preservation Plan, adding that it is in compliance with applicable
3 requirements.

4
5 Commissioner Johansen referred to RZ 2000-0003 – Sexton Place
6 Townhomes Zone Change, noting that this zone implements the intent of the
7 City Council and is appropriate for the site. Expressing his opinion that the
8 application meets the applicable criteria, he expressed his support of RZ 2000-
9 0003.

10
11 Commissioner Johansen addressed RZ 2000-0002 – Haggen Store Zone
12 Change, noting that he is not quite in agreement with his fellow
13 Commissioners. He mentioned that in 1998, he had opposed the
14 Comprehensive Plan Amendment due to the lack of an available commercial
15 zone for this site. He noted that his interpretation of the Comprehensive Plan
16 indicates that CS zoning is not available for vacant land or application on
17 Murray Boulevard; and NS zoning is not available to the site without a
18 variance regarding the one-mile spacing restriction. He noted that in
19 overturning what he still believes was a correct decision on the part of the
20 Planning Commission on the redesignation of Murray Boulevard and Beard
21 Road, the City Council had conditioned the Comprehensive Plan Amendment
22 to allow a grocery store at Murray Boulevard and Beard Road. He expressed
23 his opinion that this indicates that the Planning Commission is now legally
24 required to apply a commercial zone to this site, allowing the development of
25 a grocery store. He referred to page 10 of the LUBA opinion, which
26 suggested that if NS or CS zoning districts are not available for this site, the
27 City would simply be required to: 1) adopt a new implementing zoning
28 district or amend an existing zoning district so that it could be applied; or 2)
29 adopt any further plan map amendments that may be required to allow an
30 implementing zoning map designation to be applied. He expressed his
31 opinion that this leaves two very flawed options with respect to the rezone, as
32 follows: 1) disregard the intent of the Comprehensive Plan and apply CS
33 zoning in a location where he does not believe it's intended; or 2) uphold the
34 intent of the Comprehensive Plan by denying the rezone and let the applicant
35 appeal the decision to the City Council, where based on the City Council's
36 past actions, the Planning Commission's decision would almost certainly be
37 overturned. Other than the one-mile spacing requirement of the district, the
38 NS zone could be applied to this site and would be consistent with both the
39 decision of the City Council and the proposal of the applicant.

40
41 Referring to the City Council's decision to condition the Comprehensive Plan
42 Amendment to a single specific use, Commissioner Johansen expressed his
43 opinion that it appears to be futile to deny the application for CS zoning only
44 to have the applicant appeal the decision to the City Council or resubmit the
45 application with NS zoning. He emphasized that it is the City Council's intent
46 to allow the grocery store, adding that he is reluctantly supporting RZ 2000-

1 0002 – Haggen Store Zone Change. He expressed his opinion that the City
2 Council's decision to amend the Comprehensive Plan was wrong and that
3 their decision to condition the Comprehensive Plan was flawed. He noted that
4 the rezone decision of the Planning Commission is bound by the decision of
5 the City Council, emphasizing that this decision should no way be considered
6 precedence for future applicants to use in applying CS zoning elsewhere in the
7 City of Beaverton. He expressed his concern that future applicants will take
8 this decision out of context and attempt to utilize it as a precedent for applying
9 CS zoning in a manner inconsistent with the Comprehensive Plan. He pointed
10 out that circumstances with regard to this application are unique and do not
11 establish a precedent for the application of CS zoning to vacant land.

12
13 Commissioner Johansen referred to CUP 2000-0003 – Sexton Mountain
14 Village Conditional Use Permit/Planned Unit Development, noting that he
15 accepts the applicant's arguments with respect to the location of the store
16 within the site, adding that there has been no compelling evidence that another
17 location within the site is feasible. He discussed traffic impacts, expressing
18 his opinion that a right turn lane off of Murray Boulevard onto Maverick
19 Terrace to minimize the interruption of traffic flow is justifiable now, adding
20 that he supports a condition requiring that this right turn lane be included. He
21 expressed concern with access to Beard Road, noting that the two very closely
22 spaced accesses to Beard Road are also very closely spaced to Murray
23 Boulevard, and suggested that this is very likely to create a problem in the
24 future. He concurred with the applicant's position with respect to parking,
25 expressing his opinion that the current regional parking standards are
26 inadequate and horribly flawed. He stated that he is willing to consider a
27 reasonable request from an applicant to exceed the parking maximum. He
28 discussed the noise issue, pointing out that these residents had purchased their
29 homes within a single-family residential neighborhood. He emphasized that
30 the Planning Commission should do everything within their power to impose
31 reasonable requirements to eliminate any noise and visual impact upon the
32 neighborhood. He commended the applicant in their extensive efforts in
33 attempting to realize this goal, adding that he feels they will be successful. He
34 expressed his opinion that the loading dock is a necessary feature of this
35 application and should be required whether a 24-hour operation is granted or
36 not.

37
38 Commissioner Johansen referred to CUP 2000-0002 – Haggen Store 24-Hour
39 Operation Conditional Use Permit, and agreed with Chairman Maks'
40 assessment that a 24-hour operation will draw people from outside of the
41 intended service area. He noted that it has not been established that the need
42 is present to justify this operation, pointing out that other similar 24-hour
43 operations that have been granted are not in the midst of residential
44 neighborhoods, adding that he does not support a 24-hour operation in this
45 location.
46

1 Chairman Maks discussed opinions that had been expressed, noting that most
2 concerns in regard to Beard Court concerned road maintenance, the CCR's
3 and the Tree Preservation Plan stipulation that nothing be placed inside the
4 protective fencing.

5
6 Chairman Maks discussed issues of concern regarding Sexton Mountain,
7 specifically road maintenance, signage, blowers, parking lot cleaning,
8 pedestrian connection, light improvement, right hand turn lane on Murray
9 Boulevard, left hand turn lane on Beard Road, the enclosed loading dock,
10 landscape maintenance, parking, 24-hour operation and delivery times.

11
12 Chairman Maks referred to the Beard Court issues, questioning whether there
13 is consensus on the Planned Unit Development application to ensure that the
14 road maintenance is included within the CC&R's and presentation to the City
15 Attorney for approval.

16
17 Chairman Heckman expressed his opinion that while this sounds good,
18 enforcement is another issue.

19
20 Chairman Maks informed Commissioner Heckman that he realizes that,
21 emphasizing that this is necessary to ensure that the City does not end up
22 being responsible for the repair of a private road at some point in the future.
23 He noted that the signage should be done through site design, adding that this
24 can be a recommendation to the Board of Design Review.

25
26 At the request of Commissioner Bode, Chairman Maks repeated that the only
27 issues that he had identified with regard to the Beard Court applications had
28 included the road maintenance, the signage and the provision that the grove or
29 tree group be protected by fencing...

30
31 Commissioner Heckman advised Chairman Maks that this fencing around the
32 trees are not to be utilized for storage or any other use.

33
34 Commissioner Heckman referred to CUP 2000-0001 – Beard Court
35 Conditional Use Permit/Planned Unit Development, specifically a letter from
36 Sanders, Pletz and Gilroy suggesting certain conditions, including the hours of
37 work and clean up work. He expressed his opinion that this would be a good
38 candidate for another condition of approval.

39
40 Chairman Maks observed that he remembers this letter and disagrees that it
41 should be included as a condition of approval, adding that although he
42 disagrees, advising the Commissioners that these conditions could be included
43 as a part of the land use action.

44
45 Commissioner Heckman pointed out that this could be considered a covenant
46 between developer and two of the residents, noting that he recognizes that it

1 may not be appropriate to include these conditions in the land use order. He
2 noted that he would like some sort of assurance that no site construction work
3 shall occur between certain hours.

4
5 Assuring Commissioner Heckman that he understands his concerns, Chairman
6 Maks advised him that some sort of standard exists at this time that should
7 address this issue. He pointed out that such an agreement between two parties
8 would require enforcement, adding that noncompliance would involve the
9 utilization of taxpayer money and that he does not feel it is appropriate to
10 include this in a land use action.

11
12 Commissioner Johansen stated that he concurs with Chairman Maks on this
13 issue.

14
15 Commissioner Voytilla stated that he concurs with Chairman Maks on this
16 issue.

17
18 Commissioner Bode stated that she concurs with Chairman Maks on this
19 issue.

20
21 Commissioner Heckman informed Chairman Maks that he does not share his
22 opinion.

23
24 8:32 p.m. – 8:43 p.m. – break.

25
26 Commissioner Johansen **MOVED** and Commissioner Heckman **SECONDED**
27 a motion to approve RZ 2000-0001 Beard Court Rezone, based upon the
28 testimony, reports and exhibits presented during the Public Hearing and upon
29 background facts findings and conclusions filed in the Staff Report dated May
30 24, 2000, including Condition of Approval Nos. 1 through 5, and direct staff
31 to prepare the Findings and a Final Order that reflects this decision.

32
33 Motion **CARRIED** unanimously.

34
35 Commissioner Johansen **MOVED** to approve CUP 2000-0001 Beard Court
36 Conditional Use Permit/Planned Unit Development, based upon the
37 testimony, reports and exhibits presented during the Public Hearing and upon
38 background facts findings and conclusions filed in the Staff Report dated May
39 24, 2000, including Condition of Approval Nos. 1 through 4, and direct staff
40 to prepare the Findings and a Final Order that reflects this decision, including
41 the following conditions:

- 42
43 1) The CC&R's be implemented for the development, which provide for
44 the ongoing maintenance of the private streets within the development;
45 and
46

- 1 2) A recommendation be forward to the Board of Design Review to
2 insure appropriate signage within the development.

3
4 Commissioner Heckman pointed out that those would be Condition Nos. 5 and 6,
5 and Commissioner Johansen agreed.

6
7 Commissioner Heckman **SECONDED** the motion.

8
9 Mr. Osterberg requested that Condition of Approval No. 6 include a statement
10 indicating the purpose of this signage.

11
12 At the request of Chairman Maks, Commissioner Heckman withdrew his second
13 of the motion.

14
15 Commissioner Johansen **MOVED** and Commissioner Heckman **SECONDED** a
16 motion to approve CUP 2000-0001 Beard Court Conditional Use Permit/Planned
17 Unit Development, based upon the testimony, reports and exhibits presented
18 during the Public Hearing and upon background facts findings and conclusions
19 filed in the Staff Report dated May 24, 2000, including Condition of Approval
20 Nos. 1 through 4, and direct staff to prepare the Findings and a Final Order that
21 reflects this decision, including the following conditions:

- 22
23 5) Conditions, Covenants and Restrictions (CC&Rs) shall be
24 implemented for the development, which provide for the ongoing
25 maintenance of the private streets within the development; and

- 26
27 6) A recommendation is hereby forwarded to the Board of Design
28 Review to recommend that the Board require the applicant to provide
29 appropriate signage for public safety purposes within the development.

30
31 Commissioner Voytilla mentioned that he had thought that Condition No. 5 would
32 be forwarded to the City Attorney for approval.

33
34 Chairman Maks and Commissioner Heckman advised Commissioner Voytilla that
35 this is the intent.

36
37 Commissioner Voytilla indicated that he had not heard this included in the
38 motion, and Chairman Maks informed him that this would be addressed although
39 it is not part of the motion.

40
41 Motion **CARRIED**, unanimously.

42
43 Commissioner Johansen **MOVED** to approve TPP 2000-0001 – Beard Court Tree
44 Preservation Plan, based upon the testimony, reports and exhibits presented
45 during the Public Hearing and upon background facts findings and conclusions
46 filed in the Staff Report dated May 24, 2000, including Condition of Approval

1 Nos. 1 through 3, and direct staff to prepare the Findings and a Final Order that
2 reflects this decision.

3
4 Commissioner Heckman made a friendly amendment to the motion to approve
5 TPP 2000-0001 – Beard Court Tree Preservation Plan, to include the following
6 condition:

- 7
8 4) The arborist shall ensure that the area within tree protection
9 fencing shall not be permitted for the storage of construction
10 equipment or be used for any other type of storage or construction
11 activity.

12
13 Commissioner Voytilla **SECONDED** a motion to approve TPP 2000-0001 –
14 Beard Court Tree Preservation Plan, as amended.

15
16 Motion **CARRIED**, unanimously.

17
18 Commissioner Johansen **MOVED** and Commissioner Heckman **SECONDED** a
19 motion to approve RZ 2000-0003 – Sexton Place Townhomes Zone Change,
20 based upon the testimony, reports and exhibits presented during the Public
21 Hearing and upon background facts findings and conclusions filed in the Staff
22 Report dated May 24, 2000, including Condition of Approval Nos. 1 through 5,
23 and direct staff to prepare the Findings and a Final Order that reflects this
24 decision.

25
26 Motion **CARRIED**, unanimously.

27
28 Commissioner Johansen **MOVED** and Commissioner Bode **SECONDED** a
29 motion to approve RZ 2000-0002 – Haggen Store Zone Change, based upon the
30 testimony, reports and exhibits presented during the Public Hearing and upon
31 background facts findings and conclusions filed in the Staff Report dated May 24,
32 2000, including Condition of Approval Nos. 1 through 5, and direct staff to
33 prepare the Findings and a Final Order that reflects this decision.

34
35 Motion **CARRIED**, unanimously.

36
37 Chairman Maks observed decisions must still be made regarding CUP 2000-0003
38 – Sexton Mountain Village Conditional Use Permit/Planned Unit Development
39 and CUP 2000-0004 – Haggen Store 24-Hour Operation Conditional Use Permit.
40 Noting that he had identified the issues, he mentioned that he would like to
41 discuss the pedestrian connection.

42
43 On question, Chairman Maks informed Commissioner Voytilla that he intends to
44 address CUP 2000-0003 – Sexton Mountain Conditional Use Permit/Planned Unit
45 Development first, adding that he is also referring to CUP 2000-0002 – Haggen

1 Store 24-Hour Operation Conditional Use Permit in an attempt to build consensus
2 on these two applications.

3
4 Chairman Maks requested input regarding language pertaining to conditions of
5 approval for the pedestrian connection, suggesting the following condition of
6 approval: "In order to discourage crossing of Murray Boulevard by pedestrians,
7 and passenger drop-off, near the intersection of the Haggen parking lot pedestrian
8 walkway and the sidewalk at Murray Boulevard, the applicant shall provide a
9 sidewalk and planter strip at Murray Boulevard to not less than County standards
10 for a length of at least 150 feet, approximately centered at the intersection of the
11 Haggen walkway and the Murray Boulevard sidewalk. The revised design is
12 subject to approval of a City Design Review application and any other necessary
13 permits." Noting that he had observed that a majority of the Commissioners
14 appear to want this condition of approval, he questioned whether he has a
15 consensus on this issue.

16
17 Commissioner Heckman questioned the length of the area on Murray Boulevard
18 from Maverick Terrace to Beard Road.

19
20 Chairman Maks advised Commissioner Heckman that it is necessary to reopen the
21 Public Hearing to address this question.

22
23 Commissioner Heckman assured Chairman Maks that this will not be necessary,
24 and Chairman Maks informed him that he would reopen the Public Hearing, if
25 necessary.

26
27 Chairman Maks referred to the concerns regarding road maintenance and signage,
28 and questioned whether he has consensus on this issue involving any non-
29 standard and/or private streets. He mentioned that road maintenance applies to
30 private streets, while signage applies to both private and non-standard streets. On
31 question, he was informed that he has consensus on the issue of road maintenance
32 and signage.

33
34 Chairman Maks referred to blowers and vacuums, observing that he had
35 misplaced a condition presented by applicant, and questioned whether everyone
36 agrees with the following condition of approval: "No mechanized street sweeping,
37 parking lot sweeping equipment, leaf blowers, or any combination of these, shall
38 be operated on the grocery store site between the hours of 10:00 p.m. and 7:00
39 a.m.". On question, he was assured that he has consensus on this item.

40
41 Chairman Maks addressed the light improvement condition offered by the
42 applicant regarding a future right hand turn lane to accommodate future
43 southbound turn lane on Murray Boulevard, as follows: "Upon approval of
44 Washington County, the applicant shall construct a right-hand turn lane from
45 southbound Murray Boulevard to Maverick Terrace." He questioned whether he
46 has consensus that this condition of approval will fulfill that need.

1 Commissioner Heckman questioned the intent of "future southbound".

2
3 Observing that he is not sure when this future southbound will occur, Chairman
4 Maks mentioned a right hand turn lane off of Murray Boulevard into the site.
5 Noting that he had initially wanted this turn lane, he stated that he had given up
6 because the Beard issue had been more important to him. He mentioned that this
7 is an important issue to Commissioner Johansen, adding that if this condition is
8 placed on the applicant, Washington County would have to approve. He stated
9 that right-of-way would need to be available, and if right-of-way could not be
10 obtained, they could return and apply for a modification to the Conditional Use
11 Permit.

12
13 Commissioner Johansen mentioned an indication that there is additional, though
14 minor, vehicle delay. He expressed concern with the grade of that particular
15 location, noting that coming down after cresting a hill and heading southbound on
16 a rather rapid downhill descent could present a safety issue, in addition to the
17 delay issue.

18
19 Commissioner Heckman expressed his agreement with Commissioner Johansen in
20 regard to cresting the hill and traveling downhill.

21
22 Commissioner Voytilla concurred with Chairman Maks' earlier observation that it
23 is necessary to get arterials to function as arterials.

24
25 Commissioner Bode expressed her opinion that it is interesting that applicant is
26 willing to design and construct a traffic signal, emphasizing that the project
27 should be completed and the signal installed right now.

28
29 Observing this is not necessarily a done deal, Chairman Maks noted that it may be
30 necessary to reopen the Public Hearing to ask staff several questions.

31
32 Chairman Maks referred to a proposed landscape maintenance agreement for trees
33 planted to improve the visual aspect of the development, and questioned
34 Commissioner Heckman's intent regarding this issue.

35
36 Noting that this is actually Commissioner Voytilla's idea, Commissioner
37 Heckman stated that he agrees it should be including, adding that any landscape
38 contractor has to warrant a job of this scope for at least one year, if irrigation is
39 included, although it is possible to provide for a period of two years. On question,
40 he informed Chairman Maks that this issue is important to him.

41
42 Commissioner Voytilla observed that the applicant has gone out of his way with
43 the residents to provide buffering through the use of a rather intense vegetative
44 corridor and screening. He noted that he would like some assurance that this
45 growth will be monitored and taken care of after it is installed.
46

1 Chairman Maks noted that this is important to him, also, adding that he is
2 concerned with what this will look like and that a previous action had provided
3 for a two-year period of time.
4

5 Commissioner Bode questioned whether this two years indicates two years after
6 the completion of the project, and Chairman Maks indicated that he is uncertain of
7 this. On question, she informed him that this issue could be important to her,
8 along with other issues of concern at this time.
9

10 Chairman Maks referred to the Beard Road left hand turn lane, questioning
11 whether he has consensus on this issue.
12

13 Commissioner Johansen stated that he supports the Beard Road left hand turn
14 lane.
15

16 Expressing his opinion that this left-hand turn lane is important, Commissioner
17 Heckman questioned whether it is actually possible.
18

19 Commissioner Bode indicated that she feels that the left-hand turn lane is
20 important.
21

22 Commissioner Voytilla agreed that the left-hand turn lane is important, adding
23 that he would also like to know whether it is possible.
24

25 Chairman Maks indicated that the potential left hand turn lane is dependent upon
26 the motion, as well as other conditions that may involve the applicant purchasing
27 right-of-way or returning for a modification of the Conditional Use Permit.
28

29 Commissioner Maks referred to the parking issue.
30

31 Observing that he had been concerned with the parking issue and the metro
32 requirements, Commissioner Heckman stated that Commissioner Johansen has
33 convinced him that he is unable to vote against the proposed 367 parking spaces.
34

35 Chairman Maks agreed with Commissioner Heckman.
36

37 Commissioner Voytilla expressed his approval of the proposed 367 spaces.
38

39 Commissioner Bode agreed with her fellow Commissioners.
40

41 Chairman Maks addressed the loading dock enclosure with regard to CUP 2000-
42 0003 – Sexton Mountain Village Conditional Use Permit/Planned Unit
43 Development, noting that Commissioner Johansen has indicated that this
44 enclosure is necessary with or without the proposed 24-hour operation.
45

1 Commissioner Heckman referred to testimony of the applicant that has convinced
2 him that the enclosure is unnecessary, adding that the berm and the vegetation
3 would buffer any noise.

4

5 Commissioner Voytilla expressed his agreement with Commissioner Heckman
6 regarding the enclosure, adding that he does not find this necessary as part of this
7 Planned Unit Development request.

8

9 Chairman Maks questioned Assistant City Attorney Bill Scheiderich, who
10 informed him that the enclosure is not a feature of the Conditional Use
11 Permit/Planned Unit Development, adding that this particular application relates
12 to the residential site only.

13

14 Chairman Maks stated that it actually relates to both applications.

15

16 Development Services Manager Irish Bunnell referred to the physical plan, which
17 includes the loading dock, adding that staff has considered this feature as part of
18 the Planned Unit Development application.

19

20 Mr. Scheiderich requested that any discussion refer to either a solid enclosure or
21 the noise-proofing measures that were also entered into the record.

22

23 Chairman Maks observed that he would most likely use the wording as presented
24 by the applicant.

25

26 Chairman Maks requested clarification that this would have to apply to the Sexton
27 Mountain Village Conditional Use Permit/Planned Unit Development.

28

29 Commissioner Voytilla informed Commissioner Maks that this is true, adding that
30 as the applicant has presented it, it includes the enclosed loading dock.

31

32 Chairman Maks agreed, noting that they had indicated that they would eliminate
33 this feature if they were not granted a 24-hour operation.

34

35 On question, Commissioner Voytilla informed Chairman Maks that he would like
36 the enclosed loading dock to be a feature of this development.

37

38 Commissioner Heckman commented that while he would like the enclosed
39 loading dock, he does not feel that it is essential.

40

41 Commissioner Bode referred to the noise mitigation by use of the covered
42 receiving area, noting that it is her understanding that this is a part of their request
43 for a 24-hour operation.

44

1 Chairman Maks informed Commissioner Bode that the applicant has indicated
2 that if they are not granted a 24-hour operation, they will omit the enclosure, and
3 requested whether it is imperative to her that the loading dock be enclosed.
4

5 Observing that she is satisfied with the mitigation of the applicant with regard to
6 noise buffering, Commissioner Bode advised Chairman Maks that she does not
7 deem it necessary that the loading dock is enclosed.
8

9 Chairman Maks observed that there is a lack of consensus regarding the covered
10 loading dock, adding that this will be addressed during the motion making
11 process.
12

13 Chairman Maks referred to the 24-hour operation, noting that while some
14 Commissioners are in favor and some are not, the only issue he finds it necessary
15 to clarify at this point is the possibility of allowing a 24-hour operation while
16 limiting the deliveries during certain hours.
17

18 Commissioner Bode expressed her approval of the 24-hour operation, and
19 addressed the issue of deliveries. She pointed out that the applicant had stated
20 that there would be only one truck between the hours of 1:00 a.m. and 4:00 a.m.,
21 at which time the truck activity increases.
22

23 Commissioner Heckman stated that he is definitely opposed to the 24-hour
24 operation, adding that he would even consider conditioning the hours of operation
25 from 6:00 a.m. to Midnight.
26

27 Commissioner Voytilla expressed his approval of a 24-hour operation, adding that
28 he is concerned with the potential of limiting deliveries to certain hours.
29

30 Commissioner Johansen pointed out that the applicant has mentioned that even
31 without a 24-hour operation, there will be deliveries.
32

33 Chairman Maks reopened the Public Hearing for the purpose of asking questions
34 of the staff.
35

36 Chairman Maks referred to the right-of-way issue, specifically whether the
37 proposed right hand turn lane off of Murray Boulevard would have to be
38 approved by Washington County.
39

40 Transportation Planner Sean Morrison indicated that this is correct.
41

42 Chairman Maks questioned whether there is currently an adequate right-of-way
43 available for the purpose of a right hand turn lane on Murray Boulevard.
44

1 Mr. Morrison informed him that while there does not appear to be adequate right
2 of way for a right hand turn lane on Murray Boulevard, because the land is
3 currently undeveloped, this does not preclude this option
4

5 Chairman Maks questioned the possibility of conditioning the applicant to provide
6 a right hand turn lane, and whether the applicant could return to request a
7 modification of the Conditional Use Permit if Washington County did not concur.
8

9 Mr. Morrison informed him that this is possible.
10

11 On question, Mr. Morrison informed Chairman Maks that Washington County has
12 no jurisdiction over the proposed left-hand turn lane on Beard Road.
13

14 Chairman Maks questioned whether adequate right-of-way is available.
15

16 Mr. Morrison indicated that this is not clear, although based upon available
17 information, it appears that there is 63 feet of right-of-way, while the minimum
18 paved width for a center turn lane with bike lanes and two travel lanes is 46 feet.
19 He observed that staff would need to review an applicant proposal, which may
20 include modifications of lane widths, sidewalk widths and planter strip widths.
21 He emphasized that while it is possible, he has not reviewed the geometry of the
22 situation.
23

24 The Public Hearing was closed.
25

26 Commissioner Johansen **MOVED** to approve CUP 2000-0003 – Sexton
27 Mountain Village Project/Planned Unit Development, based upon the testimony,
28 reports and exhibits presented during the Public Hearing and upon background
29 facts findings and conclusions filed in the Staff Report dated May 24, 2000,
30 including Condition of Approval Nos. 1 through 6, and direct staff to prepare the
31 Findings and a Final Order that reflects this decision, including additional
32 Conditions of Approval, as follows:
33

- 34 7) In order to discourage crossing of Murray Boulevard by pedestrians
35 and passenger drop-off, near the intersection of the Haggen parking lot
36 pedestrian walkway and the sidewalk at Murray Boulevard, the
37 applicant shall provide a sidewalk and planter strip at Murray
38 Boulevard to not less than County standards for a length of at least 150
39 feet, approximately centered at the intersection of the Haggen
40 walkway and the Murray Boulevard sidewalk. The revised design is
41 subject to approval of a City Design Review application and any other
42 necessary permits.
43
- 44 8) No mechanized street sweeping, parking lot sweeping equipment, leaf
45 blowers, or any combination of these, shall be operated on the grocery
46 store site between the hours of 10:00 p.m. and 7:00 a.m.

1 9) Upon approval of Washington County, the applicant shall construct a
2 right-hand turn lane from southbound Murray Boulevard to Maverick
3 Terrace.

4
5 10) A landscape buffer along the west property line is to be provided
6 consistent with the applicant's presentation exhibits and the property
7 owner will monitor the health and crown of the landscape's buffer for
8 a period of no less than two years from the date of occupancy
9

10 Chairman Maks noted that he has been informed that the code requires that
11 landscaping be continually maintained, as originally approved, including
12 replacement, for a period of two years.

13
14 Mr. Bunnell read an excerpt from the code, as follows: "All landscaping
15 approved through the Design Review process shall be continually maintained,
16 including necessary watering, weeding, pruning and replacement, in a
17 substantially similar manner as originally approved."
18

19 Commissioner Johansen withdrew Condition of Approval No. 10, and continued
20 with additional Conditions of Approval, as follows:
21

22 10) A dedicated left-turn lane shall be constructed from Beard Road
23 eastbound to the public street to the Sexton Mountain Village Planned
24 Unit Development prior to building occupancy.
25

26 11) An enclosed loading dock shall be constructed in the design as
27 proposed by the applicant in the public hearing for CUP 2000-0003 –
28 Sexton Mountain Village Conditional Use Permit (Planned Unit
29 Development).
30

31 12) Conditions, Covenants and Restrictions (CC&Rs) shall be developed
32 for the development, which provide for the ongoing maintenance of
33 the private streets within the development.
34

35 13) A recommendation is hereby forwarded to the Board of Design
36 Review to recommend that the Board require the applicant to provide
37 appropriate signage for public safety purposes within the development.
38

39 Commissioner Heckman **SECONDED** a motion to approve CUP 2000-0003 –
40 Sexton Mountain Village Project/Planned Unit Development, including additional
41 Condition of Approval Nos. 7 through 13.
42

43 Observing that he is in concurrence with all additional Conditions of Approval,
44 Commissioner Heckman expressed his opinion that No. 11, concerning the
45 enclosed loading dock, could be eliminated and the application would still meet
46 his approval.

1 Commissioner Bode noted that she is more ambivalent about No. 11, expressing
2 her opinion that the landscape and berm is sufficient to address any noise issue.

3
4 Commissioner Voytilla expressed his concurrence with the Conditions of
5 Approval as stated in the motion.

6
7 Motion **CARRIED**, by the following roll call vote:

8
9 Ayes: Heckman Nays: Bode
10 Johansen
11 Voytilla
12 Maks
13

14 Commissioner Johansen **MOVED** and Commissioner Heckman **SECONDED** a
15 motion to deny CUP 2000-0002 – Haggen Store 24-Hour Operation Conditional
16 Use Permit, based upon the testimony, reports and exhibits presented during the
17 Public Hearing and upon background facts findings and conclusions filed in the
18 Staff Report dated May 24, 2000, including Condition of Approval No. 1, and
19 direct staff to prepare the Findings and a Final Order that reflects this decision.
20

21 Chairman Maks questioned Counsel whether in the event the 24-hour operation is
22 denied, and yet expanded hours are acceptable, do these expanded hours apply to
23 CUP 2000-0002 – Haggen Store 24-Hour Operation Conditional Use Permit or
24 CUP 2000-0003 – Sexton Mountain Village Conditional Use Permit/Planned Unit
25 Development.
26

27 Mr. Scheiderich deferred to staff for the proper response to this question.
28

29 Mr. Bunnell clarified that the Conditional Use Permit provides for any operation
30 between the hours of 10:00 p.m. and 7:00 a.m.
31

32 Commissioner Voytilla noted that he is not in support of this motion, adding that
33 he supports the proposed 24-hour operation.
34

35 Observing that she is not in support of the motion, Commissioner Bode
36 emphasized that she supports the 24-hour operation. She pointed out that the
37 market would make any final determination, adding that if it doesn't work, the
38 applicant will be the first to know and that is one of their rights. She commended
39 their willingness to even further accommodate the noise level, adding that the
40 reports did not even indicate the need for a covered shelter. Expressing her
41 opinion that the sound reports were in good faith, as the experts have testified, she
42 urged her fellow Commissioners to reconsider this application.
43

44 Chairman Maks questioned the possibility of denying the application but making
45 a motion for expanded hours, and Mr. Scheiderich informed him that the failure
46 of a motion for denial could be followed by a motion for approval, adding that the

1 Commissioners could act upon their own initiative to impose different terms on
2 this Conditional Use Permit.

3
4 Chairman Maks noted that he is in support of expanded hours, not the 24-hour
5 operation.

6
7 Commissioner Heckman pointed out that the approval of a motion to deny the
8 application would terminate all further business with that particular application.

9
10 At the request of Chairman Maks, Commissioner Heckman withdrew his section
11 of the motion to deny CUP 2000-0002 – Haggen Store 24-Hour Operation
12 Conditional Use Permit.

13
14 Commissioner Johansen **MOVED** to approve CUP 2000-0002 – Haggen Store
15 24-Hour Operation Conditional Use Permit, based upon the testimony, reports and
16 exhibits presented during the Public Hearing and upon background facts findings
17 and conclusions filed in the Staff Report dated May 24, 2000, including Condition
18 of Approval No. 1, and direct staff to prepare the Findings and a Final Order that
19 reflects this decision.

20
21 Chairman Maks informed Commissioner Johansen that this motion is not exactly
22 what he had in mind.

23
24 Commissioner Johansen withdrew his motion for the approval of CUP 2000-0002
25 – Haggen Store 24-Hour Operation Conditional Use Permit.

26
27 9:35 p.m. – 9:46 p.m. – break.

28
29 Chairman Maks asked Counsel whether a two-part motion could deny the 24-hour
30 operation while approving expanded hours of operation.

31
32 Mr. Scheiderich stated that this is possible, although he would phrase it
33 differently, recommending that the motion would be to approve the application
34 for a Conditional Use Permit on the further condition that the extended hours be
35 limited to certain hours.

36
37 Chairman Maks questioned whether he has consensus, adding that he would like
38 to discuss expanded hours and what constitutes operational: customers, deliveries
39 and employees, beyond the scope of subcontractors, who would be cleaning.

40
41 Commissioner Heckman expressed his opinion that the word operation should not
42 be in motion, adding that operation means any activity occurring within that
43 building involving people.

44
45 Noting that he understands Commissioner Heckman's point of view, Chairman
46 Maks ventured that a lot of similar activity is going on during "non-operational"

1 hours within certain zones, and referred to subcontractors who clean during these
2 hours.

3
4 Commissioner Heckman observed that City Hall is an operation, adding that the
5 janitors are not part of this operation.

6
7 Chairman Maks pointed out that this is exactly his point – people within the
8 building who are not employed by Haggen Store.

9
10 Mr. Scheiderich mentioned avoiding limiting activity within the confines of
11 private property, adding that the key phrase is “open to the public”. On question,
12 he informed Chairman Maks that he would consider delivery a private operation,
13 rather than public.

14
15 Chairman Maks observed that a provision is necessary for limiting delivery
16 operations as well.

17
18 Commissioner Heckman referred to the proposed expanded hours of operation,
19 expressing his opinion that the store should be closed between the hours of
20 Midnight and 6:00 a.m.

21
22 Commissioner Voytilla stated that he still feels that the request for a 24-hour
23 operation is valid, adding that the applicant has satisfactorily mitigated for this
24 option. He noted that he is not really certain what issues are a problem with the
25 application and the evidence provided by the applicant.

26
27 Commissioner Johansen advised Commissioner Voytilla that the issues involve
28 the hours open to the public and delivery hours, adding that he agrees with
29 Commissioner Heckman and supports expanded hours from 6:00 a.m. until
30 Midnight.

31
32 Commissioner Bode restated that the testimony of applicant and public was
33 reasonable, adding that the one additional employee would serve customers only
34 part time and that they don't anticipate enough business for this employee to be
35 handling customers full time.

36
37 Commissioner Bode **MOVED** to approve CUP 2000-0002 – Haggen Store 24-
38 Hour Operation Conditional Use Permit, based upon the testimony, reports and
39 exhibits presented during the Public Hearing and upon background facts findings
40 and conclusions filed in the Staff Report dated May 24, 2000, and direct staff to
41 prepare the Findings and a Final Order that reflects this decision.

42
43 Commissioner Heckman whether the motion includes the single recommendation
44 adopted by staff?
45

1 Commissioner Bode **MOVED** to amend the motion to adopt CUP 2000-0002 –
2 Haggen Store 24-Hour Operation Conditional Use Permit, to include Condition of
3 Approval No. 1.

4
5 Commissioner Voytilla **SECONDED** the motion to adopt CUP 2000-0002 –
6 Haggen Store 24-Hour Operation Conditional Use Permit, as amended.

7
8 Chairman Maks expressed his opposition to this application.

9
10 Commissioner Bode urged her fellow Commissioners who would like any further
11 clarification to review testimony on behalf of the citizens of the City of Beaverton
12 before making a decision.

13
14 Commissioner Johansen expressed his opinion that ample opportunity for review
15 has been provided, adding that he is prepared to vote.

16
17 On question, Commissioner Heckman had no comments.

18
19 Motion **DEFEATED** by the following roll call vote:

20
21 Ayes: Bode Nays: Heckman
22 Voytilla Johansen
23 Maks
24

25 Commissioner Heckman observed that Commissioner Johansen's motion had
26 been appropriate, suggesting a motion for approval and modification.

27
28 On question, Mr. Scheiderich informed Chairman Maks that a motion to approve
29 could be conditioned to provide for limitation on the extended hours.

30
31 Commissioner Johansen **MOVED** and Commissioner Heckman **SECONDED** a
32 motion to approve CUP 2000-0002 – Haggen Store 24-Hour Operation
33 Conditional Use Permit, based upon the testimony, reports and exhibits presented
34 during the Public Hearing and upon background facts findings and conclusions
35 filed in the Staff Report dated May 24, 2000, including Condition of Approval
36 No. 1, and direct staff to prepare the Findings and a Final Order that reflects this
37 decision, including the following additional Condition of Approval:

- 38
39 2) The hours that the store is open to the public are limited to the hours of
40 6:00 a.m. to 12:00 a.m. No deliveries will be permitted between the
41 hours of 10:00 p.m. and 5:00 a.m.
42

43 Commissioner Bode noting that limiting delivery trucks has the potential of
44 limiting the ability of Haggen Store to function, according to their testimony. She
45 mentioned that they had indicated one truck at 1:00 a.m., one truck at 2:00 a.m.,
46 one truck at 3:00 a.m., and increased deliveries starting at 4:00 a.m. She observed

1 that she does not want to be a part of limiting a business operation like that,
2 urging her fellow Commissioners to please reconsider placing limitations on this
3 grocery store that are not imposed on other similar operations within the area.
4

5 Chairman Maks cautioned members of the audience not to interfere with the
6 process.
7

8 Commissioner Bode noted that in reviewing the typical operations of other
9 grocery stores in area, she observed that they have had the opportunity to exercise
10 this right involving the hours of operation. She expressed her opinion that
11 Haggen Stores should have that same leverage and opportunity as other grocery
12 stores.
13

14 Chairman Maks clarified that each land use action stands on its own merits,
15 emphasizing that no previous land use action can set a precedence for this or any
16 other land use action. He mentioned Commissioner Bode's references to "need",
17 observing that she needs to identify where need is included within any criteria.
18

19 Commissioner Johansen commented that the difference between this particular
20 grocery store and other similar grocery stores is the location, emphasizing that
21 this site is surrounded on all sides by residential development.
22

23 Commissioner Bode referred to Section 40.05.15.C.3 – "The location, size, design
24 and functional characteristics of the proposal are such that it can be made
25 reasonably compatible with and have minimum impact on the livability and
26 appropriate development of other properties in the surrounding areas." She
27 expressed her opinion that based upon the facts and findings, this would not result
28 in a negative impact.
29

30 Commissioner Voytilla expressed his concern with conditioning something that
31 will be virtually impossible to enforce, adding that he does not see the practicality
32 of this.
33

34 Commissioner Bode discussed a potential situation in which an employee ends
35 work at 3:00 a.m. and whether that employee would be able to make a purchase
36 prior to leaving the store.
37

38 Commissioner Heckman clarified that the intent of Commissioner Johansen's
39 motion is to ensure that the store should not be open during these hours to allow
40 retail trade. He emphasized that each Conditional Use Permit stands on its own
41 specific merit, without any precedent from any previous Conditional Use Permit.
42

43 Chairman Maks referred to residential objective 3.4.2.11 – "Various residential
44 uses should be protected from the intrusion of incompatible uses in order to
45 preserve and stabilize the values and the character of the area." He also referred
46 to 40.05.15, noting that there is evidence in the record and testimony has been

1 received that people are concerned with the noise impacts of the vehicles. He
2 noted that he has based his decision upon this and is in support of the motion
3 currently on the table. He mentioned that currently there is CS and NS zoning
4 that are limited to those particular hours, adding that this is enforced.

5
6 Chairman Maks noted that the motion on the floor provides that the store not be
7 open to the public between the hours of Midnight and 6:00 a.m. and that no
8 deliveries be permitted between 10:00 p.m. and 5:00 a.m.

9
10 Chairman Maks noted that he doesn't understand limiting deliveries after 10:00
11 p.m. while the public can be there up until Midnight.

12
13 Commissioner Heckman requested a roll call vote on the motion:

14
15 Motion **CARRIED** by the following roll call vote:

16
17 Ayes: Heckman Nays: Bode
18 Johansen Voytilla
19 Maks

20
21 **MISCELLANEOUS BUSINESS:**

22
23 The meeting adjourned at 10:06 p.m.

CALENDAR:

1				
2	July	5		<i>NO MEETING SCHEDULED</i>
3		12	<i>Public Hearing</i>	<i>CUP 99-00032 HOME DEPOT (cont. from April 19, 2000)</i>
4				<i>CUP 2000-0015 IHOP OFF OF REGATTA LANE</i>
5				<i>CUP 2000-0014 GRAMOR</i>
6				<i>CUP 2000-0008 FOUNTAINCOURT</i>
7		19	<i>Public Hearing</i>	<i>CUP 2000-0002</i>
8				<i>RZ 2000-0005 ANNEXATION RELATED AMENDMENT</i>
9				<i>CPA 99-00015</i>
10				<i>TA 99-00006 TITLE 3 WATER QUALITY, FLOOD MGMT.</i>
11				<i>CPA 99-00014</i>
12				<i>TA 99-00005 GOAL 5 RIPARIAN & WETLAND PROTECTION</i>
13		26	<i>Public Hearing</i>	<i>RZ 99-00020 CORNELL ROAD REZONE OF TAX LOT 100</i>
14				<i>TPP 99-00008 WATERHOUSE 5 SUBDIVISION MODIFICATIONS</i>
15				<i>CPA 2000-0003 COMPREHENSIVE PLAN TRANSPORTATION</i>
16				<i>ELEMENT MODIFICATION</i>
17	August	2	<i>Public Hearing</i>	<i>CPA 99-00025 COMPREHENSIVE PLAN LAND USE ELEMENT</i>
18		9	<i>Public Hearing</i>	<i>CPA 99-00017</i>
19				<i>CPA 99-00018 TREE INVENTORY UPDATE</i>
20				<i>CPA 99-00013</i>
21				<i>TA 99-00004 WILDLIFE HABITAT & TREE PRESERVATION</i>
22		23	<i>Public Hearing</i>	<i>TA 2000-0004 TITLE 4 IMPLEMENTATION</i>